

**Written Testimony
By
Joshua R. Newton
President and CEO
UConn Foundation
February 19, 2014**

Co-Chairs, Ranking Members and Members of the Committee, thank you for your long-term support of the University of Connecticut and for the opportunity to comment on House Bill 5127, An Act Concerning the University of Connecticut Foundation. My name is Josh Newton and I am the President and CEO of the UConn Foundation.

I was attracted to the position for many reasons; prominent among them was the public investment the state's elected officials continue to make in the University of Connecticut and the academic achievements that have resulted. Your investments have also contributed to the successes of the UConn Foundation. The UConn Foundation exists for only one purpose, and that is to support and advance the educational, research and outreach missions of the University. The Foundation's ability to fulfill its purpose will be negatively impacted and its fundraising dramatically curtailed were HB 5127 to be enacted.

Permit me to provide a brief overview of the Foundation, its internal and external controls, independent oversight and current level of disclosure. I believe you will conclude that the current statutory framework governing public higher education foundations is effective --and reflects an operational model shared by our national peers -- and does not warrant the changes contemplated in HB 5127.

Reason the UConn Foundation Exists

As I indicated, the UConn Foundation exists solely to promote the educational, research, and outreach missions of the University of Connecticut. The Foundation solicits, receives and administers gifts and financial resources from private sources to enhance the University. These private gifts provide additional support beyond the University's state appropriations, tuition and other revenue and grant income. Among other things, funds donated to the Foundation are used by UConn to provide scholarships, fellowships and other forms of financial assistance to students; provide support for endowed faculty chairs and professorships to help recruit and retain faculty to teach and perform beneficial research at the University; and fund various academic, professional, and economic development activities within each of UConn's schools and colleges in order to enhance learning opportunities and the pursuit of knowledge.

Since 1994, the University and the Foundation have established a fee-for-service partnership, secured by an annual Memorandum of Understanding (MOU), which stipulates that the Foundation will conduct private fundraising on behalf of UConn. The MOU details the two organizations' mutual fundraising goals and objectives, as well as the financial arrangements agreed upon to accomplish such goals. This is a long-standing and common practice at UConn and most other major public research universities, and fully consistent with Connecticut statutes governing the proper University-Foundation relationship.

Incredible Return on Investment

The support the Foundation provides the University is critical as it significantly augments UConn's other revenue sources. In these difficult economic times, this support is more important than ever.

In fiscal year 2013, the University paid \$8.0 million to the Foundation in support of fundraising. In return, the Foundation raised \$63.3 million, its second highest total ever and second consecutive year above \$60 million.

Since 2000, the Foundation has raised \$711 million from private sources for direct operational and endowment support at the University. This is nearly an 8-to-1 return on the University's investment in the Foundation, making it a very wise and profoundly beneficial investment for UConn. At the close of FY 2013, the University's endowment, which stood at \$42 million at the start of 1995, was valued at approximately \$357 million representing approximately 12% annual growth after providing more than \$155 million in spendable support from the endowment distributions.

Reason for a Separate Foundation

As separate tax-exempt corporations, institutionally related foundations can perform many functions more effectively than state offices. The Association of Governing Boards of Universities and Colleges representing more than 1250 public and private institutions has articulated reasons why public colleges and universities establish institutionally related foundations:

- Provide a means of clearly separating state and private funds. Many donors prefer to make a gift to a private rather than a state entity. In this way, they can be assured that their gift will be invested profitably, distributed for the intended purposes, and not become confused with state appropriations or other funds.
- Provide philanthropic and advancement leadership including engagement of volunteers with specialized expertise such as investment management, real property and others, and stewardship of major donors.
- Can invest beyond the low-risk, low-return strategies often mandated by states, thereby increasing the opportunity for greater investment return and, consequently, the revenue available to the primary institution.
- Can develop for-profit subsidiaries such as research parks or real estate foundations that contribute to the mission and resources of the college or university while shielding the primary institution from the risks associated with such investments.

Donor Privacy Critical to Fundraising Success

The Connecticut General Assembly has recognized that safeguarding donor privacy is crucial to the Foundation's success and to advancing the Foundation's mission. Requiring that broader information concerning potential and actual donors be public information will have a chilling effect on the Foundation's ability to raise private funds and undermine support for the University of Connecticut. Connecticut's current law recognizes this reality by distinguishing the statutory requirements that are applicable to a state entity from those applicable to a private nonprofit foundation created to support that public entity's mission.

An independent UConn Foundation can better serve the University and donors if its private nature continues to be respected. It accomplishes this in a number of important ways:

- It assures donor anonymity when requested, as well as the confidentiality of donor financial and personal information.
- It receives gifts from donors who prefer not to have their contributions placed in state accounts.
- It provides donors with an extra level of assurance that their gifts will be used in accordance with their wishes.

Donors often feel more secure making a major gift to a foundation governed by individuals with extensive legal, business, and financial management skills. Foundation boards can operate in a businesslike manner and provide an engaging role for highly successful individuals who want to help

advance an institution. Foundations can also serve to safeguard the privacy of donors who may not want the details of their personal finances to become a matter of public record.

Controls on Disbursements, Foundation Oversight & Public Disclosure

I will not go into exhaustive detail about all the internal and external controls and oversight related to Foundation operations, gift receipts, disbursements, and stewardship of donor information and donated assets. These issues are described in detail in the attached appendix. However, I would like to underscore a few of these elements to give you a sense of protections that are in place and the level of accountability that exists. Examples are listed below.

- The Foundation is subject to Conn. Gen. Stat. Sec. 4-37e et. seq., requirements described in the appendix.
- The Foundation is subject to the enforcement authority of the Connecticut Attorney General, as are all non-profit organizations operating in the state.
- The University's Office of Audit Compliance and Ethics and the Foundation's independent auditor annually review and test accounts to ensure funds are disbursed in accordance with donor intentions.
- More than 90 percent of the gifts accepted by the UConn Foundation in 2013 were "restricted" by the donors to support a particular scholarship, faculty or program fund. Even gifts that are considered "unrestricted" are given to support a particular school, college or University for programmatic enhancement.
- The Foundation has a fiduciary responsibility to comply with donor intentions with respect to the charitable gifts it accepts and may not expend funds in a manner inconsistent with the terms of the gift provided by the donor. The Foundation routinely reports to major donors on the use of charitable contributions.
- The Foundation is governed by an independent board of more than 50 members. The Board has eight committees that actively oversee the audit, development, investment, finance and human resource activities of the Foundation.
- The Foundation's Memorandum of Understanding with the University is a public document approved by the University and the Connecticut's Attorney General's office.
- The Foundation, as mandated under current state law, is audited every year by an independent CPA firm under generally accepted auditing standards with the report being reviewed by the President and CFO of the University and the report then being forwarded to the Auditors of Public Account.
- The Foundation is required by law to annually filing information with a number of states in order to solicit charitable funds in those jurisdictions. These filings are a matter of public record.
- Annual filing of a 990 IRS Tax Form which is comprehensive and subject to public disclosure.
- The Foundation is subject to scrutiny from outside debt rating agencies like Standards & Poor and Moody's due to having its own publicly issued debt. Financial information is submitted annually to the National Bond Depositories which is also available for public inspection.

- And finally, the Foundation strictly adheres to its conflict of interest policy, and has a whistleblower policy to encourage staff reporting of any corruption, unethical practices, violation of law, mismanagement or abuse.

Conclusion

I hope that this written testimony has given you a sense that the UConn Foundation operates as a well-managed nonprofit organization with a focus on protecting our donor's right to privacy, following donor intent, and complying with all regulatory requirements. There are significant controls, oversight, and accountability in place currently at the federal and state level. If HB 5127 were to be enacted, the Foundation would be operating under a set of restrictions and would have a detrimental, long-term impact on the Foundation's ability to raise money for UConn and place it at a competitive disadvantage with its peers.

I urge the Committee to take no action on this legislation and thank you for your continued support of the University of Connecticut.

Appendix to the Written Testimony of Joshua R. Newton
President and CEO of
The University of Connecticut Foundation, Inc.
February 19, 2014

Foundation Oversight

The UConn Foundation is accountable to its Board of Directors and must adhere to a variety of federal and state regulations and laws.

Independent Board Oversight:

The UConn Foundation has an independent volunteer Board of Directors that executes its fiduciary responsibilities under the strictest of guidelines. Many members of the Board are Presidents and CEOs of major corporations. They understand the need for transparent and ethical dealings in all matters so as not to jeopardize the Foundation's status as a 501(c)(3) non-profit corporation. Many also happen to be UConn alumni and major donors to the Foundation. As a Connecticut non-stock corporation, the Foundation is required to disclose through an annual non-stock corporation report filing the name, title, and address of board members.

The Board of Directors comprises more than 50 members. At least forty percent must be former students of the University of Connecticut and there are 10 ex-officio positions for key University administrators, including, pursuant to state statute (see Conn. Gen. Stat. Sec. 4-37f), the University President, an elected student representative, and an elected faculty representative. This ex-officio membership is the norm among institutionally related foundations and arises from the fact that, by their very nature, institutionally related foundations take their mission and funding priorities from the university with which they are affiliated. Ex officio members have a voice in Board deliberations, but no vote.

The Board has eight committees that actively oversee the audit, development, investment, finance and human resource activities of the Foundation.

State Oversight:

Foundations that support state agencies are governed by CGS 4-37e to 4-37k. Below are excerpts from the Office of Legislative Research Report 2004-R-0781 which summarizes current state law:

Under the law, a foundation is a tax-exempt organization that supports a state agency. The foundation must have a governing board to oversee its operations. There must be a written agreement between the foundation and its agency governing their relationship. The payment of compensation to an agency official or employee from the foundation requires the written approval of the agency's executive authority, e. g., the head of a department or the president of a constituent unit of a higher education. The foundation must undergo an audit conducted for any fiscal year in which it has receipts and interest earnings of more than \$ 100,000. Each foundation must develop written policies regarding allegations of corruption and other whistle-blowing complaints.

Audits

A foundation that has receipts and interest earnings of more than \$ 100,000 in any fiscal year must have an audit conducted for that year. The audit must be conducted in accordance with generally accepted auditing standards. It must be conducted by an independent certified public accountant (CPA) or by the Auditors of Public Accounts if requested by the agency supported by the foundation.

The audit report must include financial statements, a management letter, and an opinion as to whether the foundation's operating procedures conform with the law governing agency foundations.

The financial statements must include the foundation's total receipts and investment earnings for the year and the amount and purpose of each receipt of funds by the agency from the foundation. The audit report must also disclose any receipt of or use by the foundation of any public funds in violation of the law. The report must go to the agency's executive authority.

If an independent CPA conducts the audit, the agency's executive authority and chief financial officer must review the report. After doing so, they must sign a letter stating that they have done so and send the report and letter to the Auditors of Public Accounts. If the report indicates that (1) funds for deposit in state accounts have been deposited in foundation accounts or (2) state funds, personnel, services, or facilities may have been used in violation of the law, the Auditors of Public Accounts may conduct a full audit of the foundation's books and accounts pertaining to such funds, personnel, services, or facilities. The Auditors of Public Accounts have access to the CPA's relevant working papers.

Additionally, under the Foundation's agreement with the University, the University's Office of Audit, Compliance and Ethics annually conducts testing of Foundation disbursements for compliance with University policies related to disbursement of Foundation funds.

The Foundation is subject to the enforcement authority of the Connecticut Attorney General to protect charitable gifts pursuant to Conn. Gen. Stat. Sec. 3-125.

Federal Compliance & Reporting:

The Foundation is required to comply with all federal laws governing 501(c)(3) non-profit organizations and annually file IRS Form 990 which require disclosure of:

- Balance sheet: assets, liabilities and net assets, revenues and expenditures for the year
- Expenditures summarized under the following functions: support for the University, management and general, and fundraising
- Revenues summarized by activity creating the revenue: e.g., investment gains or losses; endowment administration fee
- Governance of the Foundation
- Compensation of Foundation officers, board members and key Foundation employees
- List of five highest paid independent contractors
- Information regarding the Foundation's Conflict of Interest Policy and specific transactions with employees and board members
- Asks if the Foundation participated in specific transactions with employees or board members such as lending of money
- Expenditures for lobbying
- Summary of revenues and expenditures from fundraising events

Respecting Donor Intentions

The Foundation has a fiduciary responsibility to comply with donor intentions with respect to the charitable gifts it accepts and may not expend funds in a manner inconsistent with the terms of the gift provided by the donor. It cannot appropriate any of these restricted funds for the operating expenses of the Foundation, for example, or for any other purpose not in keeping with the specific provisions laid out by the donors when making their contributions.

The University regularly receives detailed expenditure reports on Foundation accounts. Both the University Office of Audit, Compliance and Ethics and the Foundation independent auditors also conduct testing of Foundation expenditures for compliance with donor intent.

Donor Confidentiality

The UConn Foundation is a separate tax-exempt corporation, not a public agency. This separate foundation structure, which is utilized successfully to support public universities nationwide, legally preserves the private nature of gifts received in the same manner that donor privacy is ensured in the case of most charitable institutions.

An independent UConn Foundation can better serve the University and donors if its separate nature continues to be respected. It accomplishes this in a number of important ways:

- It ensures donor anonymity when requested, as well as the confidentiality of donor information.
- It receives gifts from donors who prefer not to have their contributions placed in state accounts.
- It provides donors with an extra level of assurance that their gifts will be used in accordance with their wishes.
- Gifts made to the Foundation on behalf of the University provide program enhancement, rather than replacement of state support.

Under state law the UConn Foundation is specifically exempted from the Connecticut Freedom of Information Act, which is crucial to safeguarding donor privacy and advancing the Foundation's mission. In support of this important policy, Connecticut law in fact requires the Foundation to disclose to donors their right to require confidentiality as to their identity. Requiring that broader information concerning potential and actual donors be public information could have a chilling impact on the Foundation's ability to raise private funds and undermine support for the University of Connecticut.

The Difference Between Restricted And Unrestricted Gifts

The vast majority of gifts the Foundation receives is designated for specific purposes at the University. In fiscal year 2013, more than 90 percent of the gifts it accepted were "restricted" by the donors to support a particular scholarship, faculty or program fund. The Foundation has a fiduciary responsibility to comply with donor intentions with respect to the charitable gifts it accepts and may not expend funds in a manner inconsistent with the terms of the gift provided by the donor. It cannot appropriate any of these restricted funds for the operating expenses of the Foundation, for example, or for any other purpose not in keeping with the specific provisions laid out by the donors when making their contributions.

The University regularly receives detailed expenditure reports on Foundation accounts. Both the University Office of Audit, Compliance and Ethics and the Foundation independent auditors also test Foundation expenditures for compliance with donor intent.

How the Foundation Pays Its Administrative Costs

The UConn Foundation receives very few unrestricted gifts that can be used to fund its operations. The only other sources of income for the Foundation in addition to the fee-for-services payment (MOU) from the University are 1) a management fee assessed on the endowment for overseeing the investment of these assets; 2) investment earnings on non-endowed funds; and 3) a gift fee. All fees are fully disclosed to donors through pledge agreements and other gift documents. It is worth noting that unlike some larger public research

university foundations of longer standing (e.g., the University of Wisconsin), the Foundation does not possess a large enough endowment to generate sufficient management fees that would enable it to be self-funding.

Keep in mind that in most cases, contributors donate for a specific purpose. For example, if a donor specifies that their gift is to support a particular UConn scholarship, the Foundation must restrict application of that gift to that specific scholarship. The Foundation is strictly limited from spending restricted funds on operating costs, since that wasn't the donor's primary purpose.

Foundation Personnel

The UConn Foundation employs its own staff to fill some 116 positions. These employees are recruited, hired, trained, and managed subject to the Foundation's human resources policies and procedures. The Foundation reimburses the University for expenses that the University would not otherwise have incurred in relation to Foundation employees' presence in University space. The notion of the Foundation reimbursing the University is in keeping with the fact that the Foundation is not a public agency and is an entity separate from the University with a contract to provide services for the institution.

Controls on Foundation Disbursements

The Foundation is limited by both state and federal law concerning how the funds it receives may be expended. The Foundation's Certificate of Incorporation also provides limitations, consistent with federal requirements, on how the Foundation's net earnings may be distributed.

Under state statute, no officer or employee of the University may receive a salary, fee, loan or any compensation or other thing of value from the Foundation, or withdraw funds from a Foundation account for any purpose, without the written approval of the University President.

The University Board of Trustees has approved a policy entitled "Policies Regarding Financial Transactions with The University of Connecticut Foundation, Inc." The University and the Foundation have jointly established these policies to promote and ensure that disbursements from Foundation funds: are properly authorized in the context of C.G.S. Sec. 4-37e *et. seq.*, are reasonable business expenses within the context of the Internal Revenue Code, and are compliant with all state laws applicable to University employees.

The guidelines require signatories on Foundation accounts to represent to the best of their knowledge that disbursements from Foundation accounts comply with all donor imposed restrictions; support the University's mission and programs; represent reasonable, legitimate and arm's length business transactions; comply with Foundation disbursement policies; comply with the Board of Trustee guidelines; and comply with applicable laws. Under the Foundation's agreement with the University, the University's Office of Audit, Compliance and Ethics annually conducts testing of Foundation disbursements for compliance with University policies related to disbursement of Foundation funds.

In addition to the Board of Trustees policy noted above, the Foundation maintains a policy entitled "Policy and Procedures for Disbursements to the University of Connecticut," which details specific requirements and procedures for disbursing funds from Foundation accounts.

Public Disclosure

The UConn Foundation's financial dealings are subject to public disclosure in the following ways:

- The Memorandum of Understanding between the University and the Foundation is signed by the President of the University, the Chief Financial Officer of the University, the Chair of the Foundation Board of Directors, the Foundation President and the Executive Vice President of the Health Center. It is then sent for approval by the Attorney General's Office in Hartford.

- Existing state law requires foundations supporting state agencies with receipts and earnings from investments totaling in excess of \$100,000 per year or more to retain an independent certified public accountant to perform a full audit of the foundation's books and accounts. The Foundation currently retains PricewaterhouseCoopers to conduct this audit at the Foundation's expense.
- The audit results are reviewed by the President of the University and its Chief Financial Officer. The University is then required by statute to file a copy of the audit results with the Auditors of Public Account (see Conn. Gen. Stat. Sec. 4-37f(8)).
- The Foundation publishes an annual report that includes its audited financial statements and significant fundraising activities. The annual report is available on the Foundation's Web site.
- The UConn Foundation is required by various states' laws to register and make annual filings in order to solicit charitable funds in such jurisdictions. These Foundation filings are a matter of public record.
- The UConn Foundation is required by federal law to file an annual IRS Form 990, in the same manner as other public charities across the country.
- In addition, the UConn Foundation is subject to outside scrutiny by debt rating agencies such as Moody's and Standard & Poor's. The Foundation also submits financial information to the National Bond Depositories, which is available for public inspection.
- Finally, the UConn Foundation, in accordance with its Board-approved information disclosure policies, voluntarily discloses a number of documents and other information related to its activities, including a conflict of interest policy for its Board of Directors and a whistle-blower policy to encourage staff reporting of any corruption, unethical practices, violation of state laws or regulations, mismanagement, waste of funds, abuse of authority or danger to public safety. Whistle-blower complaints are directed to the State Auditors of Public Accounts.